Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1550 of 2005 (M/S)

1. Anil Kumar Sharma S/O Sri Rishi Raj Sharma
   R/O Bhim Gauda, Haridwar Tehsil & District Haridwar
2. Rishi Raj Sharma, S/O Sri Shiv Narayan
   R/o Bhim Gauda, Haridwar Tehsil & District Haridwar

… Petitioners.

Versus

1. Sri Santan Dharma Prem Sabha (Registered) through Its Secretary Nand Kishore Arora S/O Lala Jeevan Das R/O Shiv Ghat Mandir, Bhim, Gauda, Haridwar Tehsil & District haridwar through his General Power Of Attorney Sri Upendra Nath Bhasin, S/O Raj Bhaisn R/O 1/316, Krishna Gali, Kashmiri Gate, Delhi.
2. District Judge Hardiwar.
3. Civil Judge (Junior Division) Haridwar.

... Respondents.

Sri Pankaj Miglani, learned counsel for the petitioner.
Sri Manish Bhardwaj, larned counsel for respondent no. 1.
Sri Nand Prasad, Learned Standing Counsel for the respondent no. 2 & 3.

Dated: April 04, 2006

(hon'ble B.S.Verma, J.)

By means of this writ petition, the petitioner has prayed for issue of order or direction setting aside the impugned order dated 28.11.2005 passed by the learned District Judge-respondent no. 2 (Annexure 5) whereby the respondent no. 2 has dismissed the application for transfer under Section 24 C.P.C. moved by the petitioner in Original Suit No. 134 of 2005, Sanatan Dharm Sabha Vs. Anil Kumar form the court of respondent no. 3 for trial.

The relevant facts of the case are that the respondent no. 1 filed a suit before the respondent no. 3 for a decree of permanent injunction which was registered as O.S. No. 134 of 2005 on 26.5.2005. Along with the plaint, the plaintiff-respondent no. 1 filed an application for temporary injunction under Order 39, rules 1 and 2 C.P.C. and the respondent no. 3 issued notices to the defendant- O.Ps fixing 31.5.2005. Notices could not be served; hence notices were again issued fixing 9.8.2005 in the case. The defendant-petitioners

appeared and prayed for supply of copy of plaint and application. On the other hand, the plaintiff also informed the court that a *Bhandara* is being organized on the spot, on which the trial court directed that during the period 11.8.2005 to 15.8.2005, both the parties shall maintain peace by mutual consent and 23.8.2005 was fixed for hearing of objection and disposal of temporary injunction application. Aggrieved by the said order, the petitioners went up before the District Judge, Haridwar for transfer of the original suit to some other court on 19-10-2005. This application for the petitioners under Section 24 of the C.P.C. was rejected by respondent no. 2.

I have heard learned counsel for the parties and perused the entire material on record including the order passed by the District Judge Haridwar.

At the outset, it may be noted that no ex-parte injunction order has been passed by the respondent no. 3 in favour of the plaintiff on 9.8.2005. The trial court only passed the order which neither favorable to the plaintiff nor against the defendant-petitioners. It is not disputed that on 9.8.2005, the application under Order 39, Rules 1 and 23 C.P.C. was not decided. I have gone through the entire order-sheet of the trial court proceedings. The defendants were only directed not to interfere with the work of plaintiff just for a period of 5 days. The trial court fixed 23.8.2005 for objection and disposal of temporary injunction application. Even on 23.8.2005, the petitioners sought adjournment and 3.9.2005 was fixed in the suit. The petitioners felt aggrieved by the order dated 9.8.2005 only on 19.10.2005, whereas the order-sheet of original suit goes to show that after 3.9.2005, 15.9.2005, 21.9.2005, 23.9.2005, 1.10.2005 and 14.10.2005 were fixed and the application for temporary injunction was pending.

From a perusal of the order passed by the District Judge, I find that the District Judge has dealt with the entire material on record. The District Judge has recorded a clear cut finding that the petitioners have completely failed to substantiate their case for transfer of the case. The record reveals that the District Judge before

passing the impugned order called for the comments of the Presiding Officer. It may be noted here that if any grievance was caused to the petitioners by the order dated 9-8-2005, there was nothing to prevent them to prefer such application under Section 24 C.P.C. till the next date fixed by the trial court, i.e. 23.8.2005. The so- called status-quo order dated 9.8.2005 passed by the respondent no. 3 had no bearing after 15.8.2005. On the other hand, the defendants preferred to participate in the proceedings before the trial court on a number of dates after 15.8.2005, as detailed above. The petitioners do not appear to have come with clean hand before this Court.

After having heard learned counsel for the parties and after perusing the order passed by the District Judge, I am of the considered view that no illegality, or manifest error was committed by the courts below. The petitioners have completely failed to make out a case in their favour for transfer of the suit from the court of Civil Judge (Jr. Division) Haridwar to some other court. The order passed by the District Judge does not call for interference by this Court. The application under Section 24 of the C.P.C. was rightly rejected by the respondent no. 2. The writ petition is devoid of merit.

The merit petition is hereby dismissed in-limine.

(B.S.Verma, J.)

RCP